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Navy Case No. 79,693

In the United States Patent and Trademark Office

re: Bayya et al
Serial No.: 09/699,396
Filed: October 31, 2000
For: Method For Coating
Small Particles

Examiner: Michael B. Cleveland
Art Unit: 1762
Date: June 20, 2005

Request for Extension of Time Under CFR 1.136(b)

Honorable Commissioner of Patents and Trademarks
Washington, D.C. 20230:

An extension of time of two months, i.e., to August 20, 2005, is requested in the above-identified patent application to provide evidence and/or arguments regarding the issue of gelation and precipitation.

Affirmance of appealed rejections in an appeal decision that was mailed April 20, 2005, was made on the basis of apparent equivalence of gelation and precipitation, which equivalence will be contraverted by submitting scientific articles and arguments showing that gelation and precipitation are not equivalent, all of which requires additional time.

Please charge any fee due hereunder to our account #50-0281.

Respectfully submitted,

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instance, in claims 11 and 18, that is used in field emission displays.

There is nothing in the Peterson reference, in col. 6 or in any other part, nor in any other cited reference, to suggest forestalling precipitation of the precursor on the particles until after spraying of the particles and it would not be obvious to do so.

At top of p. 6 of the Board's decision, it is noted in the Strom reference that precipitation is avoided in the solution before spray drying by adding nitric acid to the solution, however, the Board agreed with the Examiner that the reference does not discuss why precipitation is avoided. The question is then if and to what extent the Strom reference remains as a reference and how is it used in the rejection.

In paragraph bridging pp. 7 and 8 of the Feb. 6, 2003, Amendment After Final Rejection, there is no admission that gelation is equivalent to precipitation. All the paragraph states is that urea and carbohydrazide are agents that can promote gelation; or that the same agents can promote precipitation.

At top of p. 12 of the specification, parameters, such as temperature or pH, are listed as preventing or discouraging precipitation on the surface of the particle. Which reference is supposed to teach or suggest such delay of precipitation?

The Board admonishes Appellants at about the middle of p. 7 of its decision in that a rejection premised on a combination of references cannot be overcome by attacking the references individually. Appellants appreciate this but they do not attack any of the applied references individually knowing that an obviousness rejection, based in a combination of references, must render the claimed subject matter obvious to a person skilled in the art. However, all of the obviousness rejections herein are based on at least 4 references and some are based on as many as 8, so that the obviousness decision is based on hindsight knowledge of the claimed subject matter, which is contrary to the concept of obviousness.

All of the appealed art rejections are based on obviousness. As was already argued, none of the appealed rejections render obvious the herein-claimed subject matter which is characterized by the clause "whereby the precursor is not precipitated until after spraying." It is only on the basis of hindsight knowledge of the herein-claimed subject matter that such a conclusion could be made.

On the issue of gelation and precipitation, please consider the text entitled "Sol-Gel Science" authored by Drs. Brinker and Scherer. Enclosed is a copy of the title page and p. 8 of the text. As noted, for instance, on p. 8 of the text,